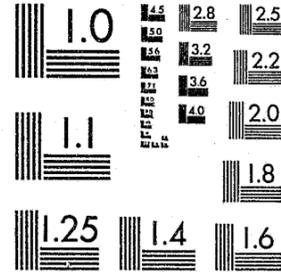


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National Institute of Justice
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Department of Justice

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STATEMENT OF

LOIS HAIGHT HERRINGTON

ASSISTANT ATTORNEY GENERAL
FOR JUSTICE ASSISTANCE
U.S. DEPARTMENT OF JUSTICE

NCJRS

JUL 18 1984

ACQUISITIONS

Before the

SENATE COMMITTEE ON THE JUDICIARY

CONCERNING

S. 2423 - VICTIMS OF CRIME ASSISTANCE

ON

MAY 1, 1984

U.S. Department of Justice
National Institute of Justice

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Mr. Chairman, I am pleased to testify before you today on S. 2423, the "Victims of Crime Assistance Act of 1984." You introduced this bill on behalf of the Administration on March 13, 1984, with your co-sponsors, Senator Biden, Senator Laxalt, Senator Heinz, and Senator Grassley. I want to extend the Administration's appreciation to you and your co-sponsors for your leadership on this critical issue. I am also very happy to see that the Senate recognizes that fair treatment for victims of crime is an issue that transcends party lines. The bipartisan support we have received in both Houses makes me confident that Congress is ready to move quickly on this important legislation.

I would also like to express my appreciation for all the help that this Committee and its staff have provided me, first in my capacity as Chairman of the President's Task Force on Victims of Crime, and now as Assistant Attorney General for Justice Assistance. I hope we can continue to work together on the important subject of Federal financial assistance to victims of crime.

I would like to first describe the key features of our bill, then respond to any questions you may have.

The Administration's bill implements many of the recommendations made by President Reagan's Task Force on Victims of Crime. The Task Force presented strong rationales for establishing a program of Federal assistance in this area. Foremost among them was that, at present, the States are shouldering the entire burden of compensating victims of crime. The Federal government, however, has a significant interest in

compensating and otherwise assisting victims of crime. By helping the criminal justice system to actually work for the benefit of the innocent victim, the Federal government can assure greater cooperation between victims and the system to the substantial benefit of law enforcement nationally. Creation of a Crime Victims' Assistance Fund in the Treasury will help the government restore public confidence in the efficiency and integrity of the criminal justice system.

The thrust of our legislation is to place the Federal government in a leadership role without creating an unnecessary bureaucracy to impose the Federal government's priorities on the States. Under the bill, the Federal government will provide money to the States to encourage them to effectively run their own programs. The States will continue to make their own policy choices on critical elements of their compensation programs. The legislation provides for only minimal Federal guidance in areas of substantial Federal interest that will not interfere with a State's discretion to run its own program as it sees fit.

Criminals--not innocent taxpayers--will provide the money for the Fund. The principal source of funding is the total of all criminal fines collected from convicted Federal defendants, including anti-trust fines. Criminal fines are also defined to include fines imposed for criminal violation of Federal motor vehicle laws, and forfeited appearance bonds posted by Federal criminal defendants.

The best, most recent figures on criminal fines collected by the courts indicate that just under \$72 million in fines was

collected in FY 1983. This figure, however, may be unreliable because it is derived from accounts maintained by the Administrative Office of the United States Courts that do not identify collected fines as civil or criminal. GAO is presently examining this issue and hopes to have a draft report available for the Department of Justice in the near future. Our bill would require the Director of the Administrative Office of the United States Courts to report to the Attorney General within one year after the bill's enactment on what steps have been taken to improve the accounting of criminal fines and to assure the deposit of fines in the Fund. The report may also make other recommendations for future Federal action to improve the collection of fines.

Absent reliable data on the amount of fines being collected now, it is not possible to definitively project how much money would be realized in the Fund from this source. It is our expectation, however, that with improved accounting techniques and the enactment of the collection procedures delineated in the Administration's "Comprehensive Crime Control Act of 1983", this source would provide approximately \$45-75 million for the Fund its first year.

Under our bill, the Fund would also receive the proceeds of any contract entered into by any Federal defendant for the sale of literary or other rights arising from his criminal act. This proposal, modeled after the "Son of Sam" laws enacted by 15 States, responds to the requirement of the "Victim and Witness Protection Act of 1982" that the Attorney General report to

Congress regarding any Federal laws necessary to ensure that Federal felons do not profit from selling the story of their crimes.

To that end, the bill adds a new Rule 32.2 to the Federal Rules of Criminal Procedure. The new rule would authorize a United States District Court judge, at any time after the filing of an indictment or information against a defendant, to order any person or organization with whom the defendant has contracted "for the purpose of having his crime or alleged crime depicted in a movie, book, newspaper, magazine, radio or television production, or live entertainment of any kind, or for the purpose of expressing his thoughts, opinions or emotions regarding such crime" to pay in to the clerk of the court any money which would otherwise be paid to the defendant, his representative, or a third party under the contract. Before entering the order, the court would be required to hold a hearing at which the defendant, the person or organization with whom he contracted, any third party beneficiary of the contract, and the victim would be permitted to speak. The purpose of the hearing would be to permit the court to determine whether the order would be warranted in the interests of justice or to redress the injuries of the victim. The defendant or any third party to the contract would have the opportunity to present any legal challenges to such an order at this hearing.

Any monies paid to the clerk would be deposited in the Fund for the benefit of any victim of the defendant's crimes. The victim could receive the funds only after securing judgment in a

civil action brought against the defendant for damages arising out of the crime. If no action was filed within 5 years after the first deposit of money into the Fund, the money would become part of the Fund. The only other use to which the money could be put would be the payment of the defendant's legal defense fees. No more than 20 percent of the money put into the Fund with respect to the defendant could, however, be used for that purpose. Upon dismissal of the charges or acquittal of the defendant, the clerk would immediately pay over to the defendant all money paid into the Fund with respect to the defendant.

These sections may serve as a deterrent to any contract ever being entered between a defendant and another party for the purposes listed above. As a result, it may be that no funds will ever be deposited in the Fund from this source. New York's experience, however, has shown that some defendants will still enter into such contracts in hope of getting better treatment on parole. No projection of anticipated funding from this source can, however, realistically be made at this time.

Fifty percent of the money deposited in the Fund will be available for distribution annually to those States with operating victim compensation programs for the purpose of reimbursing them for ten per cent of their payouts under those programs. To be eligible for this funding, a State must provide the same compensation to nonresident victims as it does to residents, and the same compensation to victims of Federal crimes as it does to victims of State crimes. The States must also agree to compensate victims for mental health counseling required

as a result of their victimization.

Thirty percent of the Fund will be distributed to the States (and the territories and commonwealths of the United States) on the basis of their population for the purpose of improving the assistance provided to victims of crime by State governments, local units of government, and nonprofit organizations. To be eligible to receive funding from this portion of the Fund, organizations must demonstrate a record of quality assistance to victims, promote the use of volunteers, demonstrate a commitment from other organizations to provide necessary services to all victims of crime, and assure coordination with other service providers.

The remaining 20 percent of the Fund will be distributed among Federal law enforcement agencies for the purpose of improving the assistance offered by the Federal government to victims of crime. This money could be spent for establishing victims assistance positions or units in Federal agencies, providing services to the victims of Federal crimes, training Federal law enforcement and court personnel in victims assistance, and disseminating information about Federal victims assistance services. A Federal Victims Assistance Administrator appointed by the Attorney General will administer this share of the Fund.

The Administrator will be guided by a Federal Victims of Crime Advisory Committee to be appointed by the President. The Committee would be chaired by the Attorney General, and would include the Secretary of the Interior (to represent, among

others, the Park Police and the Indian Police), the Secretary of the Treasury (to represent, among others, the Secret Service) the Federal Administrator, such other Federal officials as the President may appoint, and at least two members of the public who have special knowledge of the needs of victims. The Committee would also make periodic recommendations to the President about other actions the Federal government could take to improve treatment of the victims of Federal crime.

The Federal Administrator must seek to avoid funding activities that duplicate assistance already effectively provided by local organizations. The Administrator would also be responsible for overseeing Federal compliance with the "Guidelines for Fair Treatment of Federal Crime Victims and Witnesses" enacted pursuant to the Victim and Witness Protection Act of 1982.

This 20% share is necessary to enable the Federal Government to lead by example in the area of victims assistance. The U.S. Attorney's Offices and the FBI, in particular, should serve as models for district attorney's offices and state investigators in providing services to victims of crime. At present, however, there are very few victims assistance positions or units in Federal law enforcement agencies. The staff charged with the responsibility of victim assistance is often inadequately trained and unaware of the network of local service providers available to help the victim.

In addition, victims of violent crimes occurring in Federal territory--Indian reservations, military installations, United

States Parks--often have no resources close at hand to counsel, inform, and otherwise assist them in dealing with the effects of the crime. Federal personnel in these areas are presently unable to either provide necessary services or to refer the victim to an appropriate service provider.

There is, in short, a great need for training, information, and technical assistance at the Federal level to improve the treatment of Federal crime victims. It may be that, at some future date, the 20% share will provide more money at the Federal level than is needed. That time, however, is not now. At such time as the funds provided exceed the amount needed, the excess will go to state and local victim assistance providers. Under §204(e) of the Act, any portion of the 20% share that remains unspent after 3 fiscal years will be redistributed to the States in addition to their 30% allocation.

The bill would also provide victims the opportunity to appear at Federal parole hearings to inform the Parole Commission of the emotional, psychological, physical, and financial impact a prospective parolee's crime had on their lives.

The legislation contains a sunset date of September 30, 1988 and incorporates administrative provisions of the Omnibus Crime Control and Safe Streets Act, as amended, concerning nondiscrimination, audit of fund recipients, and confidentiality of information.

This Administration is committed to helping the criminal justice system of this nation provide fair and compassionate treatment to the victims of violent crime. It is apparent, Mr. Chairman, that you and the co-sponsors of S. 2423 share the same

goal. I hope that the continuation of our constructive dialogue on these issues today will result in the speedy passage of this legislation for the benefit of both the victims of crime and the criminal justice system as a whole.

Thank you, Mr. Chairman, I will be pleased to respond to any questions you or members of the Committee may have.

END